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Prohibition Brands Inc. and Monica Karen Lowe.
Case 19–CA–221090

June 26, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent, Prohibition Brands Inc., has failed to file an answer to the complaint. Upon a charge and amended charge filed by Monica Karen Lowe on May 29 and September 10, 2018,¹ respectively, the General Counsel issued a complaint on November 15 against the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. The Respondent failed to file an answer.

On January 8, 2019, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On January 17, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 3, 2019, the Board reissued the order transferring the proceeding to the Board and Notice to Show Cause to ensure service on the Respondent's registered agent. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by November 29, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter and electronic mail dated

December 4, notified the Respondent that unless an answer was received by December 11, a motion for default judgment would be filed.² Nevertheless, the Respondent failed to file an answer or to request an extension of time to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Washington State corporation with an office and place of business in Arlington, Washington (the facility), and has been engaged in the business of packaging and processing cannabis for sale to retail establishments in the State of Washington.

During the past 12 months, which period is representative of all material times, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$50,000.

During the same 12-month period, the Respondent, in conducting its operations described above, purchased and received at the facility goods valued in excess of \$5000 directly from points outside the State of Washington.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Brian Lee Laoruangroch	--	Owner/President
Megan Roe	--	Manager

From about April through May 2018, the Respondent's employees Monica Karen Lowe and Aubrey Van Assche engaged in activities for the purpose of mutual aid and

¹ All dates are 2018 unless otherwise indicated.

² The motion for default judgment and attached exhibits indicate that the Region sent the complaint by certified mail to the Respondent at its facility in Arlington, Washington, on November 15, but no authorized recipient was available. The copy of the complaint was thus returned to the Regional Office as "unclaimed." On December 13, the Region sent a letter and copy of the complaint by first class mail and electronic mail to the physical and electronic addresses listed for the Respondent's registered agent on its Annual Report filed with the Washington Secretary of State. The letter provided the Respondent with additional time, until

December 27, to file its answer. There is no indication that this mailing was unclaimed or undeliverable.

It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the postal service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd. sub nom. NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988).

protection of the Respondent's employees by concertedly complaining to the Respondent's managers Laoruangroch and Roe about defective paychecks.

From about May 22 to May 29, the Respondent's employees Monica Karen Lowe and Aubrey Van Assche engaged in activities for the purpose of mutual aid and protection of the Respondent's employees by posting comments about working conditions; specifically, about the Respondent's defective paychecks and the Respondent's noncompliance with Washington State sick leave laws on a Facebook chat.

On or before May 29, the Respondent learned that its employees Monica Karen Lowe and Aubrey Van Assche had engaged in the concerted activities described above.

On about May 29, the Respondent discharged its employees Monica Karen Lowe and Aubrey Van Assche.

The Respondent engaged in the conduct described above because Monica Karen Lowe and Aubrey Van Assche engaged in the conduct described above and to discourage employees from engaging in these or other protected concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) by discharging employees Monica Karen Lowe and Aubrey Van Assche for engaging in protected concerted activity, we shall order the Respondent to reinstate those employees and make them whole for any loss of earnings and other benefits suffered as a result of the unlawful discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate the employees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated

separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, we shall order the Respondent to compensate the named employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 19 allocating the backpay award to the appropriate calendar years. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

The Respondent shall also be required to remove from its files any reference to the unlawful discharges of Lowe and Van Assche and to notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Prohibition Brands Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against its employees because they engage in protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Monica Karen Lowe and Aubrey Van Assche full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Monica Karen Lowe and Aubrey Van Assche whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this Decision and Order.

(c) Compensate Monica Karen Lowe and Aubrey Van Assche for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify Monica Karen Lowe and Aubrey Van Assche in writing that this has been done and that their discharges will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Arlington, Washington, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 29, 2018.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 26, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any employee for engaging in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Monica Karen Lowe and Aubrey Van Assche full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Monica Karen Lowe and Aubrey Van Assche whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest, and WE WILL also make those employees whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Monica Karen Lowe and Aubrey Van Assche for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 19, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharges of Monica Karen Lowe and Aubrey Van Assche, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

PROHIBITION BRANDS INC.

The Board's decision can be found at www.nlr.gov/case/19-CA-221090 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

